

(2015) 09 CAL CK 0057
In the Calcutta High Court
Case No : CO 1686 of 2013

State of West Bengal

APPELLANT

Vs

Debendra Nath Karsharma and Others

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 47 Rule 1, 151, 47
Constitution of India, 1950 — Article 215, 226, 227
Land Acquisition Act, 1894 — Section 18, 4, 4(1), 5A, 6

Citation : (2015) 09 CAL CK 0057

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : Lakshmi Gupta, Ld. Addl. A.G. and Amit Kumar Rakshit, for the Appellant; Soumen Das Gupta, and Kalyanmoy Modok, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashis Kumar Chakraborty, J—In this revisional application the petitioner challenges Order No. 87 dated 11th April, 2013 passed by the Ld. District Judge, Purba Medinipur in Judicial Misc. Case No. 26 of 2012 arising out of an application under Section 47 of the Code of Civil Procedure in Money Execution Case No. 2 of 2010. By the impugned order the Ld. District Judge rejected the petitioner's application for dismissal of the execution case instituted by the opposite parties/decreed holders.

2. A notification dated 6th March, 1998 was published under Section 4(1) of the Land Acquisition Act, 1894, for acquisition of 0.20 acres of land in Mouja Garmoyana and Mouja Anandapur in the district of the then Medinipur. The said publication in the Official Gazette was for acquisition of land for construction of Paramanandapur Pingla ODR Road. Out of the aforesaid 0.20 acres of land, a part of the land belonged to the opposite parties. The dispute between the parties is as regards the quantum of land owned by the opposite parties.

3. On 9th July, 1998 the opposite party No. 1 submitted an objection under Section 5A of the Land Acquisition Act, 1894 wherein the said opposite party claimed to be the owner of 10.50 decimals of land out of the total land proposed to be acquired. Such objection was rejected by the authority concerned on 8th November, 1998.

4. On 29th July, 1999 declaration under Section 6 of the Land Acquisition Act, 1894 was published in the official gazette acquiring the aforesaid 0.20 acres of land. On 28th July, 1999 the opposite party No. 1 filed a written objection claiming, inter alia, that the total area owned by him is 10.50 decimals out of the acquired 0.20 acres.

5. In the year 2000, the opposite party No. 1 filed a writ petition in this Court being WP No. 15225 (w) of 2000 praying for direction upon the authorities to make and declare the Award in respect of the aforesaid acquisition and also for a direction upon the authorities to pay rent compensation in respect of the acquired property from the year 1960 as according to him the said land was requisitioned by the authorities in 1960.

6. The said writ petition was disposed of by this court by an order dated 21st September, 2000 by directing the authorities to make an Award as early as possible and preferably within six months from the date of communication of the order. The authorities were also directed to determine the rent compensation within six months and to pay the same within three months from the date of determination.

7. The rent compensation was determined and paid to the opposite parties in the year 2001.

8. On 6th February, 2001, the Land Acquisition Collector of the then Medinipur district made his Award in LA Case No. 17 of 1999-00 in respect of acquisition of the aforesaid land. The total market value of the aforesaid 0.20 acres of land was determined at Rs. 37,142.80 to which was added compensation for trees valued at Rs. 967.50 and compensation for structures valued at Rs. 48,147/-. To the total compensation amounting to Rs. 86,257.30/-, solatium @ 30 per cent and additional compensation @ 12 per cent for two years seven months six days were added by the Land Acquisition Collector.

9. On 30th August, 2001, the opposite parties received their share from the amount of compensation awarded, under protest.

10. Being aggrieved by the aforesaid award of the Land Acquisition Collector, the opposite parties sought reference of the award under Section 18 of the Land Acquisition Act, which was forwarded to the 5th Court of the Addl. District Judge, Medinipur i.e. the designated Land Acquisition Judge. The case was registered as LA Case No. 26 of 2001.

11. On 18th September, 2003, the Ld. Land Acquisition Judge made his award fixing a flat rate of Rs. 10,000/- per decimal of land as to market value of the

acquired land and also awarded Rs. 60,000/- as compensation for the structures standing on the land acquired. He also awarded solatium at the rate of 30 per cent and interest. It is important to note that in his judgment and order the Ld. Land Acquisition Judge recorded that the opposite parties were owner of 12 decimals of land and not 10.50 decimals of land.

12. Being aggrieved by the judgment and award of the Ld. Land Acquisition Judge, the opposite parties filed an appeal in this court which was initially registered as FAT 2978 of 2003 and subsequently as FA No. 194 of 2004. By a judgment and order dated 14th July, 2006 this court allowed the said appeal and enhanced the market value of the land to Rs. 15,000/- per decimal. This court also granted additional compensation @ 12 per cent, solatium @ 30 per cent and interest on the compensation amount from the date of possession that is from 1960.

13. Being aggrieved by the judgment and order of this court, the petitioner preferred a Special Leave Petition (C) No. 2258 of 2007 before the Hon''ble Supreme Court contending that grant of interest on compensation was permissible only from the date of publication of notification under Section 4(1) of the Land Acquisition Act, 1894 and not for any period prior thereto.

14. The opposite parties filed Money Execution Case No. 1 of 2008 in the Court of the 5th Addl. District Judge, Purba Medinipur seeking execution of the decree passed by the Land Acquisition Judge as modified by this court. In 2010 the execution case stood transferred to the court of the District Judge, Purba Medinipur and was registered as Money Execution Case No. 2 of 2010.

15. Subsequently, the petitioner made an application in the executing court praying for permission to lead evidence to prove the fact that the quantum of land acquired from the opposite parties measured 10.50 decimals and not 12 decimals as recorded in the award of the Land Acquisition Judge. The Ld. District Judge allowed such prayer of the petitioner and evidence was recorded by the Ld. Court.

16. The aforesaid Special Leave Petition preferred by the petitioner was admitted and registered as Civil Appeal No. 962 of 2007. By an order dated 7th April, 2011, the Hon''ble Court disposed of the petitioner's appeal disallowing grant of interest on compensation for the period prior to the issuance of notification under Section 4 of the Land Acquisition Act. However, the Hon''ble Supreme Court held that the opposite parties would be entitled to rent/damages for the period of requisition and directed the concerned Collector to consider and determine the rent/damages that may be payable to the opposite parties.

17. The application that was filed by the petitioner before the Ld. District Judge for establishing that the Land Acquisition Judge had erroneously recorded in his award that the opposite parties were owners of 12 decimals of land instead of 10.50 decimals, was heard by the Ld. District Judge and by an order dated 11th April, 2013 she held that it was beyond her jurisdiction to consider the evidence

led by the petitioner which went contrary to the award made by the Ld. Acquisition Judge. Accordingly, such evidence was rejected and the execution case was directed to proceed.

18. Thereafter, the petitioner filed an application under Order 47 Rule 1 of the Code of Civil Procedure for review of the judgment and award of the Ld. Land Acquisition Collector and for modifying the same by stating that the opposite parties were owners of 10.50 decimals of land instead of 12 decimals of land. The said review application was rejected by the Ld. Land Acquisition Judge holding that what according to the petitioner was an error in the award was not an error apparent on the face of the record and could not therefore be corrected by way of review. He further held that since the dispute had gone up to the Hon"ble Supreme Court, the matter stood finally decided and as such there was no scope for review of the award.

19. Being aggrieved by the order of the Land Acquisition Judge dismissing the review application, the petitioner filed an application under Article 227 of the Constitution in this court being CO No. 911 of 2014.

20. By a judgment and order dated 11th July, 2014 this court dismissed the said revisional application by holding that the issue as to the quantum of land and the compensation therefor has attained finality between the parties in the order of the Hon"ble Supreme Court passed on 7th April, 2011. Hence, it would be inappropriate for the court to reopen such issue. In any event, it was not an error apparent on the face of the record and there was no material irregularity in the Ld. Land Acquisition Judge dismissing the review application.

21. Being aggrieved by the said judgment and order dated 11th July, 2014 the petitioner filed a Special Leave Petition before the Hon"ble Supreme Court of India which was dismissed by an order dated 1st December, 2014 with an observation that "the question of law is kept open".

22. The present revisional application has been filed challenging the order dated 11th April, 2013 passed by the Ld. District Judge whereby she rejected the petitioner's application under Section 47 of the Code of Civil Procedure challenging the maintainability of the execution proceedings.

23. Appearing on behalf of the petitioner Mr. Gupta, Ld. Addl. Advocate General forcefully contended that the opposite party No. 1 in the objection filed to the proposed acquisition himself stated that he was the owner of 10.50 decimals of land out of 0.20 acres of land that was being acquired. He also received the compensation for the 10.50 decimals of land, albeit under protest. An error that inadvertently crept into the judgment and award of the Ld. Land Acquisition Judge to the effect that the opposite parties are the owners of 12 decimals of land remained uncorrected due to sheer oversight and the same has given rise to a situation where the State might have to pay compensation for an extra 1.5 decimal of land which it did not acquire from the opposite parties. He submitted that the opposite parties should not be allowed to take advantage of an obvious

error and that would also amount to unjust enrichment of the opposite parties at the expense of the State. He submitted that this obvious error should be corrected by this court in exercise of its supervisory jurisdiction upon the executing court's failure to rectify the error which amounts to material irregularity.

24. Mr. Gupta relied on a decision of the Hon'ble Supreme Court in the case of M.M. Thomas Vs. State of Kerala and Another, AIR 2000 SC 540 : (2000) 1 JT 26 : (2000) 1 SCALE 14 : (2000) 1 SCC 666 : (2000) 1 SCR 33 : (2000) AIRSCW 73 : (2000) 1 Supreme 1 wherein at paragraph 14 of the judgment the Hon'ble Apex Court observed that the High Court as a Court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. The court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. The court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only power, but a duty to correct it. He also relied on a decision of the Hon'ble Supreme Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, AIR 2003 SC 3044 : (2003) 4 CTC 48 : (2003) 6 SCALE 133 : (2003) 6 SCC 675 : (2003) 2 SCR 290 Supp : (2003) WritLR 722 : (2003) AIRSCW 3872 : (2003) 6 Supreme 390 wherein at paragraph 25 of the judgment it was observed as follows:--

"Upon a review of decided cases and a survey of the occasions wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases

the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well."

25. Relying on the aforesaid decisions Mr. Gupta submitted that it is a duty of this court to rectify the records of the proceedings by removing the obvious error regarding the quantum of land acquired from the opposite parties. Otherwise, such an error will remain uncorrected in perpetuity and for all times to come apart from causing substantial prejudice to the State.

26. Appearing on behalf of the opposite parties Mr. Das Gupta, Ld. Sr. Counsel submitted that in the written objection filed in respect of the proposed acquisition it was inadvertently stated that the opposite parties were owners of 10.5 decimals of land out of the 0.02 acres acquired. Ld. Counsel drew this court's attention to the written statement filed on behalf of the opposite parties before the Ld. Addl. District Judge, Medinipur in LA Misc. Case No. 26 of 2001 wherein it was stated that the opposite parties are the owners of 12 decimals of land. He submitted that in his judgment and award passed in LA Misc. Case NO. 26 of 2001 the Ld. Addl. District Judge correctly recorded that the opposite parties were the owners of 12 decimals of land. In the appeal preferred against the judgment and award of the Ld. Addl. District Judge, the Division Bench of this court in its judgment and order dated 14th July, 2006 also recorded that the opposite parties are owners of 12 decimals of land. The Special Leave Petition preferred against the judgment and order of the Division Bench of this court was disposed of by the Hon'ble Supreme Court by its judgment and order dated 7th April, 2011 merely by clarifying that the opposite parties cannot claim interest on compensation for the period prior to issuance of notification under Section 4 of the Land Acquisition Act. Thus, the issue of the quantum of land owned by the opposite parties has attained finality.

27. Ld. Counsel also referred to the judgment and order dated 11th July, 2014 passed by this court in CO No. 911 of 2014. In that Civil Revisional Application the petitioner had challenged an order dated 23rd December, 2013 passed in J Misc. Case No. 02 of 2013 arising out of LA Misc. Case No. 26 of 2001. By the order dated 23rd December, 2013, the Land Acquisition Judge had dismissed the petitioner's application under Order 47 Rule 1 of the Code of Civil Procedure for modification of the judgment and award dated 18th September, 2003 passed by the Land Acquisition Judge by stating that the opposite parties were owners of 10.5 decimals of land instead of 12 decimals. Such revisional application was dismissed by the Ld. Judge by holding that there was no error apparent on the face of the record and no ground for review have been made out. The revisional application against such order of dismissal of the review petition was dismissed by this court by its judgment and order dated 11th July, 2014. This court held

that the issue as to quantum of land and the compensation therefor has attained finality between the parties by reason of the judgment and order of the Hon''ble Supreme Court dated 7th April, 2011 and it would be inappropriate for this court to reopen that issue.

28. I have considered the rival contentions of the parties.

29. Mr. Gupta, Ld. Addl. Advocate General vociferously argued that the Ld. Land Acquisition Judge in his judgment/award wrongly recorded that the opposite parties were owners of 12 decimals of land. He emphasized that in the written objection filed in connection with the proposed acquisition before the Collector, the opposite parties themselves stated that they owned 10.5 decimals of land. Hence, there was no basis for the Ld. Land Acquisition Judge to record that the opposite parties owned 12 decimals of land. This error remained undetected for a long time and did not come to the notice of the petitioner until after the Supreme Court's judgment and order dated 7th April 2011. As such, this issue could not be addressed before the Division Bench of this court in the appeal preferred against the award and judgment of the Ld. Land Acquisition Judge or before the Supreme Court in the Special Leave Petition preferred against the judgment and order of the Division Bench of this court.

30. I am unable to agree with the submission of Mr. Gupta. In the written statement filed before the Ld. Land Acquisition Judge the opposite parties stated that they were owners of 12 decimals of land. No objection to the same was raised on behalf of the petitioner. Hence, there was nothing wrong in the Ld. Land Acquisition Judge recording that the opposite parties owned 12 decimals of land. It is difficult to accept the contention of the petitioner that the alleged error regarding the recording of the quantum of land owned by the opposite parties was not detected by the opposite parties for long eight years.

31. Before the executing court below the petitioner filed an application under Section 47 of the CPC read with Order 21 Rule 2 and Section 151 thereof challenging the maintainability of the execution proceeding on the ground that the opposite parties were the owners of 10.5 decimals of land and not 12 decimals of land and the entire compensation for the land acquired has been paid to the opposite parties. It was contended by the petitioner before the Ld. Judge that it had no liability to pay compensation for 12 decimals of land. The Ld. Judge held that the executing court could not go beyond the decree. The decree being the award of the Ld. Land Acquisition Judge recorded that the opposite parties were owners of 12 decimals of land. This was not challenged before the Ld. Land Acquisition Judge or the Hon''ble Division Bench of this court or the Hon''ble Supreme Court. The executing court could not travel beyond the award nor modify the award in any manner. With those observations, Id. Court below dismissed the petitioner's application by its judgment and order dated 11th April, 2013.

32. I am in full agreement with the view of the Id. Court below. In my view also

the issue of quantum of land belonging to the opposite parties which has been acquired has attained finality as between the parties after the judgment and order of the Hon"ble Supreme Court dated 7th April, 2011. While I am in respectful agreement with the principles of law laid down in the decisions of the Hon"ble Supreme Court cited by Mr. Gupta, in my opinion, the said decisions have no manner of application in the facts of the present case.

33. Mr. Gupta also argued that while dismissing the petitioner's Special Leave Petition against this court's judgment and order dated 11th July, 2014 passed in CO No. 911 of 2014, the Hon"ble Supreme Court had observed that "the question of law is kept open". According to him this meant that the question of quantum of land belonging to the opposite parties also remains open. With respect, I am unable to agree with him. The question of how much land was owned by the opposite parties is not a question of law.

34. I have to keep in mind that though the power of the High Court under Article 227 of the Constitution of India is very wide, such power is to be exercised sparingly and not to correct every error of law or fact in the judgment/order of the Lower Court or Tribunal. The Court can justifiably intervene in the exercise of its supervisory power when an order of a Tribunal or Lower Court is violative of the fundamental basic principles of justice and fair play or where a flagrant error in procedure or law has crept in or where the order results in manifest injustice. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court have done what they were required to do. Law is well settled by various decisions of the Hon"ble Supreme Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption of or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material or resulting in manifest injustice. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate Courts or Tribunals. Exercise of power under Article 227 and interfering with the orders of the inferior Courts or Tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law and justice. The High Court while acting under Article 227 cannot exercise its power as an Appellate Court or substitute its own judgment in place of that of the subordinate Court to correct an error which is not apparent on the face of the record.

35. I find no irregularity or error apparent on the face of the judgment and order of the Id. Court below which is impugned in the present revisional application. I can find no fault with the approach of the Id. Trial Judge. In my opinion, the judgment and order challenged in this application warrants no interference. Accordingly, this application fails and is dismissed. There will be no order as to costs.

36. Urgent certified Photostat copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.